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DISSERTATION 3

CONCERNING

POLITICAL EQUALITY,

AND THE

*Corporation of New-York.*

BY JAMES CHEETHAM. K

NEW-YORK,

PRINTED BY D. DENNISTON.

1800.

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DISSEMINATION

CONCERNING

POLITICAL EQUALITY

AND THE

Constitution of New-England



By J. H. CHURCHILL

NEW-YORK

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# INTRODUCTION.

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POSTERITY, if not the present age, will view the revolution of the United States as an event the most singular and extraordinary that ever occurred in the annals of human transactions. Whether we view it as data, from which the emancipation of Europe may be argued, or limit its benignity by the Mississippi and the St. Laurence, still it is important. In this, without advert- ing to the beneficial effects it has produced to every inhabitant on this Continent, it is an unanswerable con- futation of pestilent doctrines of the advocates of des- potic power, from the days of Sir Robert Filmer, to those of Edmund Burke, viz. That Representative Go- vernment, such as ours is, can have no being but in the imagination, and consequently is impracticable. In that, tho' the progress may be slow, and the concussions inseperable from vast revolutions, great and numerous, yet the event is certain, viz. that Europe will, eventu- ally, overthrow its present iniquitous Governments, and institute polities more consonant with justice and the solid happiness of man. The imperishable sentiment is gone forth, and the salutary work must be completed. The germ was indeed first planted in the United States, but its branches shall inwrap the globe. Resistance to ty- ranny has taken an everlasting root in the human mind, and that cause which produced the revolution of the United States, will give to Europe a double impulse, because doubly oppressed. Of this oppression, and the obduracy of their oppressors, Europeans are sensible, and manifest an invincible desire to redress their own wrongs. This mode is efficient; every other ineffec- tual; for despotism will concede that only which, for want of armed power, it cannot retain.

The grand sentiment of our revolution is happily re- corded in the declaration of independence. In it we behold an inimitable depiction of the sentiments of a nation sensible of its wrongs, and rising, in the impres- sive attitude of a people animated by one common sen-



timent to assert its rights. This declaration contains, amongst others equally excellent, the following words, "We hold these truths to be self-evident, that all men are created equal." It was worthy the sage and patriotic assembly to recognize and incorporate in this its first act of legislation, a sentiment so correct and just that no argument, at no period, has been able to effect. And what is the induction from this thesis? That as all men are created equal, and as Governments are instituted by men for their mutual safety and comfort, it follows, that the right of all, to institute, is equal. So far the political equality of man extends, which is to the utmost limits, and so far the position has been sanctified by the wisest assembly the world ever knew.

This dogma, the foundation of our Government, though not perfect and in full force throughout the federal compact, yet it *approaches nearer to perfection than any other Government hitherto known*. We wish we could here say that this perfectability, like the ubiquity of God, extended itself to every political institution within our land. But that adherence to truth, of which we are tenacious, compels us to observe, that this principle was not universally infused into our state politics at the æra of the revolution. Every state exhibits in material points different and repugnant politics, and some of them strange contraventions of the original sentiment. We regret this want of uniformity, since we fear, that unless the just principle of equal representation do prevail in every state government, the republicanism of this country, pressed on all sides by so many deadly foes, must ultimately fall a sacrifice to their insidious arts.

Nevertheless, such is the nature of civil compacts, that the people have at all times an unalienable right to make such alterations as to them may appear necessary. In all such cases nothing more is necessary than to know that evils exist; to ascertain the causes from which they spring; and to apply remedies commensurate therewith. For as in other matters, so in politics, experience will best teach us the excellence of our institutions. Hence

the reasonableness of this postulate, that it is a right inherent in the people to make such alterations in their political systems as experience, the foundation of our knowledge, shall have demonstrated to be necessary. The great object of civil politics is happiness; and happiness being the desire of all men, it follows, that they have a right at all times to make choice of that system which appears best calculated to produce the end.



# INTRODUCTION.

the usefulness of this paper, that it is a treatise in  
the art of the people to make their lives in their  
hands and feet, to experience the foundation of our  
existence, that we are not to be the only  
the object of our existence, but to be the  
first being in the world, to follow the path  
of a new life, to make a choice of the best  
which we can find, and to follow it.



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 CHAPT. I.
 

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*Of Political Equality.*

COMPARATIVELY, society is in political science, what infants are respecting knowledge, in a state of ignorance. Notwithstanding the laborious researches of ancient and modern politicians; notwithstanding the rapid and colossian advances made in the United States in this branch of human knowledge, the world has not, even at this late period, discovered one single principle which, like the lemmas in mathematics, may be laid down as incontrovertible. And yet until this be done until the rights of man shall be demonstrated like the propositions of Euclid, and the generality of mankind be made acquainted therewith, the possession of liberty, even when once established, cannot be secure. We are deficient in the developement of fundamental principles, sufficiently clear and undoubted. And yet it is necessary to have unerring standards by a collation with which we might determine, when the proceedings of legislatures are in unison therewith and promotive of the general weal. Until we arrive at this stage of political science and make mankind acquainted with its principles, the wars, the usurpations, the tyrannies, the dissonance, and the bickerings which destroy the life and solace of man, will not cease to exist: tho' we shall find, as indeed we now do, that in proportion as we advance in the knowledge of this most necessary science, and that knowledge becomes general, the condition of man will be meliorated.

The principle of equality will lead us to this ultimate point. It is on this principle *alone* that the liberty of

man is founded; and this is the criterion whereby we may determine, with considerable precision, the degree of liberty existent in states. If the science of government ever be reduced to clear and determinate rules, it will be through the medium of political equality. For we invariably find that governments become despotic in the ratio that constituent power diminishes; or in other words, in proportion as governments become independent of the controul of the people, the people become the slaves of governments.

On the other hand, in proportion as the people possess the controuling power of the state according to a known and mutually established rule, they will be politically happy. For as man never wills that *knowingly*, which tends to destroy his happiness, so he will never will the existence of laws which will lessen his felicity. If the beatification of man depended upon himself, and its attainment was within his own grasp, his felicity would be complete, since he would never will its attenuation. If this reasoning holds good individually considered, it is not less so with respect to nations, which are composed of individuals. Therefore a government whose body shall be animated by the sentiment of the people, and its actions dictated by their will, will not, *knowingly*, do that which will lessen the happiness of the whole. If such a government should ever err, it would be from want of *knowledge* (which is not probable) not from *design*. It is the difference of the being of equality which constitutes the difference between the political state of the people of Russia and those of the United States. The former, slaves of the most abject condition, have no more power to controul or influence the government of Russia than they have to controul or influence our own. Why? Because those who administer that government do not depend upon the people for their offices: because they are not amenable to the people for their conduct. The people therefore are of no farther consideration in the state, than as subjects of the taxation & instruments to operate the will of government. As if ordained by God, they live and labour only to conduce to the happiness of their tyrants, and to nourish the merciless



hand that smites them. In the United States, tho' political equality is not as perfect as it might be, yet every man feels and maintains the dignity of his station. The government is *really* the government of the people. It was they who modelled the body and breathed into it the breath of life. If it should answer not the end designed, they have the same right to amend that they had originally to institute it. Such is the difference between the political state of the two countries.

And what is the cause that has produced this difference? A want of the establishment of political equality, together with a want of knowledge of its importance, sufficiently extensive and correct to continue its being. These are inseparable companions in a national view, both in their progress and declension. We cannot attribute the political superiority of the people of the United States over those of Russia to any other cause than their superior weight and importance in the state. Take away the weight and importance of the citizens of these states from their government; make the government as independant of the controul of the citizens as that of Russia, & it will become a vortex that will absorb the earnings and the happiness of the country; and the people, no longer the free and enlightened citizens of America, will become the slaves of its pleasure.

Such is the nature and importance of political equality, that where it is not, the people, governed by a few men who by various means have usurped the powers of the state, must necessarily be vassals. If the establishment of this principle in ancient Rome, had been as universal as it is universally just, the dagger of Brutus, to rid the world of a tyrant, would have been unnecessary. To us who enjoy an equality in the state unknown in other countries; it would be difficult to conceive the possibility of a man, however transcendent his talents and vicious his heart, to become a second Cæsar; and so very improbable is such a case, that the citizens, secure in the consciousness of their importance in the commonwealth, never dream of such an event. The wholesome equality of the state, and the consequent de-



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fusion of political knowledge, are the best safe-guards of the liberty of the people, and alone competent to curb the ambition and repress the attempts of the designing.

The law of equality is the law of God : and as its great author is immutable and eternal, so is this primeval principle. Nor is it likely that revolutions will cease until its establishment be as universal as man. What is it that has propelled the government of England to the precipice on which it now stands ? The want of this equality, which like the repulsive power in the natural world, confines governments within their own bounds. Give us that weight in our national council to which by nature we are entitled ; give us universal suffrage, is the exclamation of every honest, thinking man, from the two extremes to the centre of the kingdom. And if this equality had prevailed in the state a century back, is it presumable that the people would have been plunged into so many ruinous wars as they have been during that period ? those who think so will do well dispassionately to examine the proceedings of the house of representatives of the United States in the present contest with France. The wise and manly conduct displayed by this branch of the government is an effect ; of what ? of the controuling power of the people operating upon its proceedings. Suppose for a moment the President of the United States invested with the prerogative of declaring war, like the King of England ; and the House of representatives, the conservatory of the republic, as much under his controul as the House of Commons in England is under that of the Minister ; is it not probable that war would long ago have been declared ? Those who have attentively observed the conduct of the executive ; who have read his communications to the two houses ; his addresses to the addressors, and judiciously considered the spirit of enmity manifested throughout, will hardly answer in the negative. At any rate, of this no man will doubt, that the United States have had as much cause to declare war against France as England had to commence the present one : and yet in the former case war has not been declared, but in the latter it has ; and that

too, notwithstanding the decided aversion manifested thereto by a very large proportion of the people. They clearly foresaw and predicted that no good could result from such a measure: and their predictions have been verified. But they were dragged into it by a government over which they had no influence, and whose power they could not controul but by open and active resistance. To what cause then shall we ascribe this difference but to the influence the people have over their government on the one hand, and the want of that influence on the other? and what gives this influence but the equality established in the republic? Nothing. Here then we have a remarkable instance of the difference between a government created and essentially moved by the people, and one established over them. The proceedings of the former are regulated by wisdom and an ardent solicitude to promote the general good: those of the latter by an insatiable desire to enrich the few concerned in wielding the hideous machine by the general wreck of every thing valuable to man.

Such is the operating force of this principle, and so well is it understood in practice by the ill-disposed of every country, who have gained power in states, that arbitrary government cannot be established without circumscribing constituent power\*. In this they are correct. Constituent power cannot be wrested from the people without proportionately endangering their liberty. The equality of man, the rightful foundation of legitimate governments cannot be abridged without a proportionable abridgment of public liberty. If, for example, our representatives are dependent upon their constituents for offices in the state, it necessarily follows, that in proportion as constituent power decreases, their independence, or disregard of the interests of the people, increase. By the same unerring rule the dependence of

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\* *Whatever were the motives of those who dictated and passed the present naturalization act, it tends to this point in a given ratio. Constituent power has not increased with the increase of population: yet the mutual increase of these two, is the life and soul of representative government.*



our representatives increase with the increase of constituent power. Of course, in the degree that this power prevails in states, the will of the people will prevail in the governments.

Whether the effects herein mentioned have, or not, resulted from the principle laid down, every man will determine for himself. But of this no one will doubt who has in the least examined into men and measures; that in those countries where the people have the least power, governments are the most despotic, and the people the least happy: as in England, the continent of Europe, and in oriental countries. It is therefore the business of the politician to explore and exhibit the cause. And here I think it is; the people of the United States are, beyond all doubt, more politically happy than any people of which we have knowledge; and that too, I am convinced, because a greater equality prevails in the republic.

Hitherto we have written only of the effects in order to clear the way to examine and exhibit more perspicuously the nature and extent of the equality of man. This subject has claimed the attention of the ablest writers. Such indeed was the opinion of Mr. Locke concerning the equality of man, that he makes it the foundation of all the freedom and felicity that man can enjoy. In his chapter "of the state of nature" he observes,

"A *state of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another: there being nothing more evident than that creatures of the same rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection, unless the Lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty."

"This *equality* of man by nature, the judicious *Hooker* looks upon as so evident in itself and beyond all question, that he makes it the foundation of that obligation



to mutual love amongst men, on which he builds the duties they owe one another, and from which he derives the great maxims of *justice* and *charity*. His words are."

"The like natural inducements hath brought men to know that it is no less their duty to love others than themselves; for seeing those things which are equal must needs all have one measure, if I cannot but wish to receive good, even as much at every man's hands, as every man can wish even to his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire which is undoubtedly in other men being of one and the same nature? To have any thing offered to them repugnant to this desire, must needs in all respects grieve them as much as me; so that if I do harm, I must look to suffer; there being no reason that others should shew greater measure of love to me, than they have by me shewed unto them; my desire therefore to be loved of my equals in nature, as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason has drawn for direction of life no man is ignorant." Locke on Gov, p. 177 - 8. § 4. 5. Lon. E. 1772.

But notwithstanding the sound arguments of these celebrated authors, of numberless others before and since their days, and what is, we think, of much greater force, the practical assertion of this equality in the United States, we still see its authenticity questioned and even denied. And indeed so we do truths the most obvious by men whose desires and propensities are vicious, & by those whose erroneous judgments resistlessly lead them into involuntary error. We shall nevertheless enquire into the being and nature of political equality, and endeavour to shew that governments not founded upon this principle, in its amplitude, are unjust, and that too exactly in proportion that the practice is an aberration from the principle.

The present condition of society, even in the best regulated states, affords no exact standard to ascertain the truth or falsehood of political equality. To determine this point satisfactorily, and to fix it on permanent ground, we must have recourse to something anterior to custom. For if we make custom the touchstone of the problem, we shall find that it is incapable of furnishing ground for satisfactory solution. Custom establishes nothing with respect to rights; since, universally considered, it is incapable of furnishing matter out of which a proposition may be made that shall be universally true. Foreexample, inequality obtains most in governmental regulations; but yet it does not universally obtain. Therefore we cannot make inequality an universal proposition in the science of government. We have a living and potent exception in the popular branch of our own government which destroys the universality of the postulate. This reasoning will also apply with equal force against the being of equality in *practice*; since we have numerous instances of governments founded indeed upon the despotism of a single individual, which destroys *practical* equality as an ubiquitous proposition. Custom therefore furnishes no rule capable of affecting the subject one way or other. When two customs therefore prevail diametrically opposite, how shall we determine the truth of either? By recurring to principles of being antecedent to both. To do this we must divest ourselves as much as possible of the ideas that habit has excited and fixed in the mind, and view the subject apart from the prevailing practices of men. We must trace and endeavour to discover the principle by which civil society must be regulated if justly constructed: and instead of permitting the forms & practices of government so to take possession of the mind as wholly to obliterate even the remembrance of first principles; suffer unshackled reason to glance into the illimitable field of nature, and to contemplate principles, of nature unchangeable, in their pure and unadulterated state. For the principle of civil government, like that by which a clock is regulated, has separate being from the machine; so that notwithstanding the machinery



may be imperfect, yet the imperfection affects not the principle by which it ought to be regulated.

To understand then the nature of political equality we must advert to the condition of man in a state of nature, i. e. antecedent to the formation of civil covenants. We shall then be able clearly to perceive the only equitable mode in which civil governments can be constructed.

But it has been asserted that there never was a period when men lived together without civil law, and thence inferred, that that state of nature mentioned by various authors is a mere chimera. It may therefore be necessary to refute this erroneous hypothesis in order to clear the way for the admission of the doctrine of equality. This we shall do in a two-fold manner :

First, Theoretically; and

Second, By the aduction of a practical example of men living together in a state of nature; i. e. without laws to govern them, and actually and mutually making covenants for themselves as if laws had never been.

First. We think it susceptible of exact demonstration that there has been a time when men lived together *totally* without human laws. The very existence of laws proves that there must have been a period whether known or not to ourselves, when no law or rule of action made by men did exist. For example, when we see fleets built and towns erected, what are we to conclude but that they are the productions of men whose being must have been prior to our own? In the same manner the being of human law is an effect: of what? Of the being of man antecedent to that of law. Law being made by man, if man had not existed law would not have been. The existence of law demonstrates the previous existence of man, from whom they spring; in the same manner that the being of human intelligence (b.) demonstrates the pre-existence of God the great cause of every thing that is. Both are the effect of their predicates.

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b. See Locke on understanding vol. 2. p. 192. Lon. Ed. 1793.

Therefore, it is as self-evident as that one and one when combined make two, that if laws exist they had beginning and if beginning, there *must* have been a time when men lived together without law.

But tyranny itself, which incessantly bends its baneful force to lock up the intellectual powers of man, has, without intending it, furnished the world with a recent instance of men living together in a *state of nature*, absolutely without civil rules, and mutually coalescing to make laws for themselves in that just and equitable mode for which we contend. The case to which we allude is a memorable one; *it was a great mean of laying the foundation of a great and happy commonwealth, a land of patriots and of sages, and the best refuge of oppressed men.* It is that of Mr. John Robinson and the venerable band of patriots who fled from the tyranny of the English government, and fought, in the wilds of New-England, for that liberty and repose so criminally withheld from them in their native land (c).

This religious band which, minors and adults, consisted of one hundred and one persons were, what is termed in ecclesiastical language, puritans. Puritanism at that day [In the reign of James I.] was deemed an innovation of the Dogmas of the established church. And as all established churches do, and from their nature perhaps ever will, persecute and tyrannize over Dissenters, we have here a memorable instance of their infuriate spirit and of the sad effects of these baleful establishments. No sooner was primitive Christianity attempted to be revived and the frippery and inanity of church establishments attacked, than the engine of state, moved by sacerdotal power, singled out as victims of its ven-

c. *The persecution and tyranny which these christian patriots sustained were such as invariably flow from that worst species of misrule the admixture of church and state. And this example of their shocking effects, were there none other, ought to operate all powerfully on the minds of every American citizen to resist, by all constitutional means, an union of any church with the state—The history of man speaks plainly and powerfully to his understanding that, when men of religious profession, obtain political predominancy in states, they are of all others the most iron hearted tyrants. Therefore, as America values her liberty, let her guard most scrupulously against their undue acquisition of political power.*



geance, all those who did not worship self-existence, in the manner prescribed by this *pious government*. Uniformity of religious sentiments and worship were the ostensible, but the gratification of church ambition, and the furtherance of church emolument, were the real objects in view. The former, if real, was impracticable. The latter, alas! is not so: nor will the world cease to be infested with these pestilential establishments until mankind begin to reason and to act like rational beings: They will then see their inutility; they will then perceive the wicked purposes to accomplish which they are wholly devoted. For surely nothing can be more blasphemous than to punish men for not universally thinking alike! This is the worst, the most inequitable, and the most intollerable of tyrannies. It would be as easy for tyrants, ecclesiastical or civil, to callapse the earth & sun as to make men to think and to act alike. Uniformity of action must flow from uniformity of thinking; and uniformity of thinking from human intelligence, uniformly and universally perceiving alike; which perhaps cannot result from the present organic conformation of man. And indeed if we did universally perceive alike, then acts of constraint would be unnecessary; but as we do not nor cannot, nothing can possibly result from constraint but victims and hypocrites.

But church authority seldom reasons well or much. An act was passed for punishing all who refused to come to church, or were present at any conventicle or meeting. The punishment was imprisonment till the convicted agreed to conform, and made a declaration of his conformity. If that was not done in three months, he was to quit the realm, and go into perpetual banishment. In case he did not depart within the time limited, or returned afterwards without a licence, he was to suffer death." Ramsey's history of the revolution p. 6. L. E. 1793.

Such was the nature of this unjust and merciless act that the Puritans were necessitated either to seal their own infamy by professing to conform to what in good conscience they could not; to suffer death as some of them

actually did, (d) or to go into perpetual exile. Mr. Robinson and his virtuous associates preferred the last alternative. They sailed from England in the year 1620, destined to America. But as they were victims of the tyranny of the state; as they were going into exile to avert consequences to them infinitely more disagreeable, so they sailed from England destitute of the protection of government. They had neither patents conceding to them extensive dominion, nor constitutions of government for the regulation of their civil life. As the government drove them out of the "realm," so it abdicated the protection it owed them while within it. They were therefore left as much to themselves with respect to having no law, but having laws to form, as if they were the only persons upon the globe. In this light they viewed their situation and acted accordingly. For we find that, before they stepped a foot on American ground, a meeting was mutually called to consider the propriety of making a constitution by which they should be governed after landing (e) They entered into a "solemn compact," (f) to which they all subscribed their names, thereby making it the basis of their government.

From these historical evidences we learn,

First, that when Mr. Robinson and his co-exiles arrived at the coast of America, they found themselves in an *absolute state of nature*, i. e. a body of men about to

(d) See *Idem.* p. 6.

(e) "Before landing they formed themselves into a body politic under the crown of England for the purpose of "Framing just and equal laws, ordinances, acts, constitutions, and offices," to which forty one" (every adult) "of their number subscribed their names, and promised all due submission and obedience." Ramsey's history p. 7.

(f) The following is an authentic copy of this contract. "In the name of God Amen. We whose names are under written, having undertaken, for the glory of God, and the advancement of the christian faith, and honour of our king and country, a voyage to plant the first colony in the northern parts of Virginia, do, by these presents, solemnly and mutually, in the presence of God, and one of another, covenant and combine ourselves together into a civil body politic, for our better ordaining and preservation, and furtherance of the ends aforesaid; and by virtue thereof to enact, constitute, and frame, such just and equal laws, ordinances,



enter upon and to cultivate an unknown land, totally without law to govern them. But as they were likely to continue in a gregarious state, it was necessary, for the furtherance of the ends for which governments are instituted, that they should enter into that "solemn covenant." Here then was the beginning of that body politic, and though its component parts were but few, yet if the principle on which they proceeded be just, it will apply with equal force and precision to indefinite numbers. That compact, like every other, must, in its operation affect every one within its jurisdiction; and as all were to be affected by it, it belonged to all to have an equal share in its conformation. Accordingly we find that *every adult* was not only present at its making and his presence considered necessary to its legitimacy, but that they all signed the agreement. The latter is considered as a circumstance peculiar to the case, but the former as a right that can never be impaired (g).

We are then got so far. We find that a state of nature has a real being, and that however men may abuse

*acts, constitutions and offices, from time to time as shal be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience: in witness whereof we have hereunto subscribed our names, at Cape Cod, the 11th November, in the year of the reign of our sovereign lord king James, of England, France and Ireland, the eighteenth, and of Scotland the fifty fourth, Anno Domini 1620."*

"This instrument was signed by 24 heads of families, with the number of their respective families annexed, and 17 single men, making in the whole 101 souls!" See Mörse's geog. v. 1. p. 318. Boston E. 1793.

(g) We might multiply instances of men being in a state of nature until the reader would be weary. We shall just mention another. Vattel, in his law of nations, has this passage.

"Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, lived together in the state of nature, nations, or sovereign states, are to be considered as so many free persons living together in the state of nature." P. 49. New-York E. 1796.

Nations are, therefore, in relation to each other, what men are before they enter into civil society, in a state of perfect freedom and equality. Governments, considered with each other, defend, with great pertinacity, this natural freedom and equality. But they are seldom willing to allow freedom and equality to belong to those whom they govern.

those rights which flow from that state, yet the abuse neither affects the abstract principle nor weakens the claim of man to its full fruition. In what then does this equality consist for which even in a state of nature, we contend? Not in bodily strength or symmetry; not in mental capacity or the acquirement of knowledge, for in these we see no universal equality; *but in the equal right which every man has, when at years of discretion, in the affairs of that government, instituted by and for the benefit of that society of which he is a component part.*

A state of nature is a state of perfect freedom and equality; and as it is a state of freedom and equality so it is a state of peril and insecurity. Good government is alone competent to correct the evils to which every man is exposed in a state of nature. For where there is no law common to all, individual reason is the only measure of men's actions which must necessarily render the possession of life, and liberty, and property, extremely uncertain. Nor could real offences, in such a state, be punished. For where is the authoritative tribunal to determine the magnitude of offences and the punishment due thereto? There is none. And as there is no common standard to determine, so there is no power to retribute offences but such as reside in individuals. It is to soften these asperities of nature that men unite in civil society, that they agree to rules of action that shall apply to those covenanted, and to lodge the power of punishing offences against the common weal, in the hands of the body politic. To transfer this power, *partially*, to judge and to punish from individuals, in whom it originally resided, to the whole society, is a principal end of government. For (all things considered) a state of nature would be preferable to that of the civil state, if in it men could be secure from those injuries of which the civil state takes cognizance. But as they cannot, and as it is necessary for the safety of mankind that crimes should not go unpunished, civil government founded upon universal justice, is the proper and only corrective.

The great end of government is security. This includes the protection of life, liberty, and property. Men can have no other motive for uniting in civil socie-



ty than the attainment of these primary objects. This protection can only be effected by placing the power to judge of and to punish offences *somewhere*. For no method hath yet been devised, and perhaps never will be, calculated to render men incapable of perpetrating offences. All that society can do, even in its best state, is to punish transgression according to its degree of turpitude. Governmental example and wholesome laws may do much, but they cannot make bad men good. Punishing the offences of some, and forbidding, generally, the commission of certain acts under pains and penalties, are the great means of protecting the whole. Legislative, executive, and judiciary powers, are all founded upon the reasonable presumption that offences against the well being of society will be committed, and the necessity, for the end of general protection, that provision should be made for their rightful punishment. There are, doubtless, other objects which come properly within the province of internal legislation. But *protection* is the mighty one and *punishment* the great mean to accomplish it. And however multiform the means employed may be, yet the end is eternally and identically the same.

Such are the great points to be attained by men quitting the state of nature and individually submitting their actions to be judged by one common standard erected by mutual consent and for reciprocal advantage.

And here we shall endeavour to shew the nature of political equality, which we conceive susceptible of such clear demonstration that if we fail in demonstrating the reasonableness and universality of the principle, the fault will be our own.

Suppose a given number of men, say one thousand, living together in the state of nature, strangers to law, but, conscious of its importance, mutually coalescing to institute rules by which the whole shall be governed. Now it is obvious that, if the principle that will apply to one thousand be just, it will not be less so when applied to one million, or one hundred millions. The principle and its operation will be precisely the same, and to apply it to any number it is only necessary to extend

the idea as the numbers increase. Previous to entering into this pact they must all needs be equal, that is, no one could possess more privileges than another. Corrupt establishments only have created political distinctions in constituent rights. For in a state of nature, in which there is no law, there cannot be privileged superiors; and where there is no privileged superiors fictitiously created, the indubitable equality of men, standing upon the broad ground upon which God hath placed them cannot be denied. The chief object to be attained by commuting the state of nature for that of civil society is protection. Now protection is equally due to all concerned. To whom then does the right of making this compact belong that shall effect the lives, and liberty, and property of the whole? clearly, if of sane mind and mature age, to every one of the number covenanting, whose every thing will be affected thereby. If one half, for instance, should assert that they have the exclusive right to make a compact for the other, whence did they derive that right which does not belong to the whole? no one can tell. It is clear they could have no such right. If the right belong to any, then by this undoubted axiom "It is impossible for a thing to be and not to be at the same time;" it is impossible the right can belong to one without belonging to the whole. "Things which are equal to the same are equal to one another." (h) Therefore, men being equal, if the right to institute belong to one man it equally belongs to another: It cannot belong to a part without belonging to the whole. Again, "The whole is greater than its parts." (i) But the parts must forever retain the properties and qualities of the whole in the ratio of their quantity of matter. So it is with a Government. The right to begin, to erect, and continue a Government belongs solely to the community or whole for which it is intended. Divide that community into the smallest possible number, say one, and by parity of reasoning it will be found that as the right appertains to the whole, so in equal proportions, it appertains to

(h) *Simson's Euclid*, p. 3.

(i) *Idem*, p. 6.



to its parts: and consequently, if the right belongs to one man, it equally belongs to another.

Such is the essence, the foundation, and such our ideas of political equality. And so earnestly do we wish to be right in this matter; and so thoroughly are we convinced that the principle here laid down is correct, that should we be herein mistaken we desire to be corrected by *argument*: And we shall esteem ourselves favored by any one who will point out the error.

Now as it would be palpably unjust and an act of great violence for one half of the number mentioned to deprive the other of their right of suffrage in the conformation of the original compact, so it would be proportionately unjust in any other given number. If ninety nine hundredths should combine to deprive the hundredth person of his right of elective franchise, tho' the crime would differ in degree of turpitude, it would nevertheless be of the same kind. This necessarily follows from the principle already advanced and explained, viz. that the right of suffrage cannot belong to one man without belonging to another; that it cannot belong to a part without belonging to the whole; and the whole being made up of parts, it follows that equal parts must have equal rights. Therefore, every person who is deprived of this right, sustains an act of great violence, and is thereby, in appropriate language, made a slave. For what can be greater slavery than to be subject to the will and controul of our fellow men? It is in this that slavery consists: It is against this base villainage that the free mind of man perpetually revolts.

Every disfranchisement, however few the number disfranchised, is unjust, and originates in *power* not in *right*. To illustrate this position we will suppose a case. Suppose when the federal compact was made, twelve states of the United States had combined to extend that confederation to the thirteenth, and "to bind it in all cases whatsoever," without allowing the state its right to an adequate share in the choice of the government;—would not such a proceeding have been a gross violation

of the rights of the state? As the federal compact was intended for the government of the whole, had not each state an equal right, according to its population, in the choice and formation of that government which should bind the whole? Most certainly. If one state possessed the right, so did another, and so did the whole. Such an assumption would have been a palpable infraction of the rights of the state, and predicated only on the power of the *twelve states* to bind the *thirteenth*. This is obvious. And is it less so for a larger or smaller number of people to combine to deprive any portion of the community of their equal rights as men? The supposed dismemberment of the state, and the supposition of the twelve states combining to bind the thirteenth to their will, stands precisely on the same ground. In principle they are parallel: In practice both cases are unjust according to the number of people disfranchised. And hence it is evident that for governments to be justly constructed, they must be founded upon the universal equality of man; & that where they rest not upon this broad basis, they are usurpations in proportion that this equality is wanting.

Privation of constituent rights, whether on an extensive or small scale, necessarily places mankind in a state of sentimental warfare; and there is no possible method of extirpating these seeds of dissonance and dissolution, and of rendering universal satisfaction, but by giving to mankind their equal rights. Nor will this warfare be confined to mere sentiment longer than the injured and enslaved become sufficiently powerful to resist the tyranny. And then, both theory and modern history evinces that, impatient of unreasonable and unnecessary restraint, and indignant at the galling thought that a large moiety of mankind live only to subserve the wants of the other; they burst forth like resistless torrents; sweep away the odious and unsufferable tyranny, and involve for a time, both the innocent and the guilty in indiscriminate chaos and bloodshed. But though the act be dire, yet it is necessary. Though revolutions are evils during their existence, yet, their seeds being sown in the inequality



of men, it is to be expected that, nurtured by the genial warmth of patriotism, and the unextinguishable love of man for the enjoyment of liberty, the period of their maturity must arrive. This was the case with these states: this was the cause which impelled and precipitated France into her present revolution, and called into being that potent republic. But as liberty, with her consequent order and happiness, has arisen from the revolution of the former, so, we doubt not but that equal liberty, and order, and happiness, will result from the latter.

Political inequality, like every act of violence, has nothing to defend it but force. It is a crime of the most atrocious kind. It is engendered in wickedness; it is nourished by venality; it is upheld by power: and it continues to be, until both become too weak for its support; and then, like useless and exploded kings, it descends to its natural level. Its strong hold is ignorance; consequently, as the human mind becomes illumined, the huge colossus crumbles into dust, and oppressed man, rising from his dungeon, resumes the station assigned him by his maker.

That political inequality is founded solely on power, and is in its nature the highest species of injustice, will appear still more evident by pursuing the subject a little further. For this purpose we beg the reader to bear in mind the idea of a given number of men, jointly leaving the state of nature and uniting to establish a government for mutual advantage. This done, admit the assumption of the rights of the whole by one half the given number. Could a government so constituted be binding upon that half whose assent thereto had never been required, and in the instituting of which they had nothing to do? We answer no. The consent of all the parts is indispensibly necessary to the legitimacy of the government. The assent of the whole to particular modifications is not nor cannot be expected. In all such cases the assent of the majority of the whole must forever be final. But what we contend for is the equal right of all to give being to and continue the existence of govern-

ment. For as the consent of the parties is necessary to make valid a contract between two men, so the consent of all the parts of the community is alike necessary to make valid a national compact. Both these positions flow from the same source, viz, that one man cannot of right be bound by another against his consent—To be free from such bondage is the only security we have for the preservation of every thing estimable to man. National freedom, & the right of self-preservation, appertains equally to all men. But of what importance are these invaluable blessings if one part of mankind can, when they please, deprive the other of these first of all gifts? They are of none. That liberty which should never be surrendered but with life, that preservation in the state which should never be lost sight of, would be of no value.

But there is another branch of this doctrine which requires investigation and developement. For the purpose of reconciling a large moiety of mankind to their state of slavery, a doctrine has been sedulously propagated, that in the civil state it is necessary to give up a great proportion of our *natural* rights in order to secure the enjoyment of the rest. This doctrine has much plausibility and force where thought and investigation is wanting. It is therefore well calculated to delude the ignorant, and is much inculcated by those who profit by the fraud. It is universally propagated in despotic countries. A large proportion of Englishmen are laid asleep with the powerful opiate. The senate and the bar resounds with this enslaving doctrine; and three-fourths of the people are at this moment ready to solace themselves with the very comfortable idea, that the fewer privileges they enjoy in the kingdom, the more they comply with the just principles of civil government. Alas! what state is there to which uninformed men cannot be reduced by the perfidy and cunning of civil and ecclesiastical tyranny?

In order to give this topic an ingenuous discussion, and to bring it fairly before the tribunal of the public and of reason, we shall cite the opinions of two respectable authorities who differ widely on this subject. These are



Mr. Locke and Mr. Vattel. Though we confess, that had the mind the researches and the information of Vattel, which enabled him to reason on this subject with the strength and precision of Locke, yet any one who reads his book, will easily perceive that he was an advocate for kingly power, and that a prepossession of this noxious sentiment must have biased his mind on this point. We shall nevertheless consider the position apart from the consideration of men: we shall examine the principle and decide accordingly.

## LOCKE.

"Law, in its true notion, is not so much the limitation as *the direction of a free and intelligent agent* to his proper interest, and prescribes no further than is for the general good of those under that law: could they be happier without it, the law, as an useless thing, would of itself vanish: and that ill deserves the name of confinement which hedges in only from bogs and precipices. So that however it may be mistaken, *the end of law* is not to abolish or restrain, but to *preserve and enlarge freedom*: for in all the states of created beings capable of laws, *where there is no law, there is no freedom*: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not

## VATTEL.

"It is evident from the law of nature, that all men being naturally free and independent, they cannot lose these blessings without their own consent. Citizens cannot enjoy them fully and absolutely in any state, because they have surrendered a part of these privileges to the sovereign." Law of nations. p. 50. New-York E. 1796.

as we are told, a liberty for every man to do what he lists: (for who could be free whenever other man's humour might domineer over him?) but a *liberty* to dispose and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own." *Treatise of gov.* p. 218. 19. L. E. 1772.

Though M. de Vattel has not gone as far in giving up men's rights as some ministerial civilians and hereditary statesmen in Europe, yet, it would have been no more than fair to have told us what these surrendered privileges are of which he speaks. He seems to have contented himself with the simple declaration that we have "surrendered a part of our privileges to the sovereign." It is easy to make such an assertion, but it is not as easy to prove its truth in principle. If he meant it as a *mere fact*, when applied to some states, its authenticity cannot be doubted. Indeed he might have gone farther. Nineteen twentieths of the people of England have scarcely any privileges. The same may be said with equal truth of those of Germany, Russia, Prussia, of almost all Europe, and certainly of all Asia. But this was not his meaning. He as well as others who have carried the point further than himself, advance it as the regular operation of principle, necessary and unavoidable on men entering the civil state; and on this ground we shall proceed to consider it.

If the words that men "have surrendered a part of the privileges of nature to the sovereign," have any im-



port, it is this, that every person, on entering the civil state, *necessarily* surrenders to the contracting parties or "sovereign," a part of the privileges appertaining to him in the state of nature. In order to determine this position it is necessary to distinguish what privileges there are in the state of nature which men cannot enjoy in the civil state. Until this be done, we shall prate like parrots, without having in the mind a clear and distinct perception of the things of which we speak. Here then we declare without hesitancy or ambiguity, that we know of no privileges appertaining to men in the state of nature which they cannot enjoy in the civil state compatibly with the just principles of civil government.

What privileges are there belonging to man in the state of nature, the fruition of which are necessarily denied them in the civil state?

It may be said that in the state of nature the actions of men are not restrained, that there being no authority established by law to punish offences, men are free to do what they please. So far as this relates to the *power* of man to do wrong in the state of nature, without being subject to punishment by the regular operation of law, the position is correct; but certainly not so as to *right*. Reason exclaims as loudly against injustice in the natural as in the civil state. It is not that because there is no law to punish injuries done in the natural state that men are free to commit them; since the same injuries done to our fellow men in the natural, are as great offences against reason and justice as they are against law in the civil state, which is no more than the exposition of that reason & justice which equally pervades both. If a man in the state of nature should invade and sack his neighbour's property, deprive him of life or limb, or immure him in durance during his pleasure; would such acts be crimes of less magnitude in the eye of reason because in that state there is no law to punish such offences? Certainly not. Reason, on which punitive laws against burglary, house-breaking, murder and the like are founded, condemns the commission of these offences in the state of nature, as much as the laws founded thereon will punish their per-

petration in the civil state. *Mutual justice*, and that love of self-preservation predominant in every man, solemnly and powerfully forbids us, in *every state*, to injure each other in life, liberty, or property. For if I respect not these things in others, how can I expect others to respect them in me? This is reason, which in the state of nature, is the law of that state; and which in the civil state, is the foundation of all the good laws with which mankind have ever been blessed. Therefore, as it never was the *right* of man to do *wrong*, and as it would be wrong for one man to injure another, so it cannot be a privilege of the natural state to commit injustice, which, in a well regulated civil state would not pass unpunished. But if any one should still incline to the opinion that to do wrong is a privilege of the state of nature, to such we observe, that the sooner this unreasonable privilege be "surrendered to the Sovereign," and thence banished forever from the presence of man, the better; nor should we in the civil state lose much liberty by its flight.

But if the perpetration of offences oppugnant to reason and justice, be a privilege of the natural, it is also, we contend, equally a privilege of the civil state. Men have the same power to violate the great maxims of justice in the civil, that they have in the natural state. The civil state does not nor cannot deprive men of the power to commit injustice. They still retain the capability of perpetrating crimes which shock humanity and inflict misery upon human beings. But tho' they have the *power* to commit them in *both*, yet they have not the right in *either*. As men may commit murder, the most horrid of all crimes, in the natural, so they may in the civil state. Nor is this or any other crime less justifiable in the one than in the other. The only difference that we perceive, in this respect, between the two states, is this, that in the civil state laws compels submission to their regular operation. Whereas there being no law in the natural state to compel obedience, offenders add to their offences by resisting that punishment which reason prescribes and individual safety requires.

But we will allow, to shew the absurdity of the posi-



tion, that to do wrong or to commit injustice, is a privilege of the natural state; yet, for what purpose is it necessary that this privilege should be surrendered by individuals to the state unless to be exercised by the sovereign to whom the surrender is made? And if to be exercised by the sovereign or whole, how is it to operate but by abusing its parts? If this supposed privilege of nature be so exceedingly baleful that individuals cannot use it in the civil state without injuring each other, and the whole, how much more injurious would it be for the state to possess and exercise it? What must be the situation of the state when saturated with this load of abomination? Would the mighty mass of peccancy and injustice lie dormant in the body politic? No. Would there be no danger of fermentation? Yes. Like vesuvius it would belch forth and scatter over the pale of its influence, its deteriorating lava. And is it more justifiable for a nation to do wrong than for an individual? Besides if it ever was a privilege of men to do wrong in any state, to surrender it is impossible. To render mankind incapable of violating moral justice, it is necessary to *invert nature*, to create man anew, and of *purer materials*. The business of society is to prevent as far as possible the commission of offences, and where it cannot reasonably to chastise them. Therefore, as it never was a privilege of the natural state to infringe the law of reason, it follows that that which never was a privilege can never be surrendered.

But as men have conceded to the civil state a power to punish offences committed against the safety of its members, have they not, by the concession, surrendered a right appertaining to them in the state of nature? If we were to answer this question in the affirmative, it would make nothing for those who contend that men cannot enjoy in the civil state their natural rights; since, the power to punish wrongs is conceded equally by the whole; is founded upon a rule of mutual justice, and established by mutual consent. This rule can never operate to suppress or prevent acts promotive of the general

good. Its great province is to punish, in a fair and rational way, actions which violate the law of reason, disturb public repose, and lessen public happiness. But to this question we answer, that so far from men surrendering any of their natural rights by lodging this power in the civil state, that they thereby acquire privileges which, in the natural state, they cannot possibly enjoy.

If men, in any case, surrender to the civil state, on entering therein, any of the rights which flow from the state of nature, it is by investing in the sovereign punitive powers. In the natural state the right of punishment appertains only to the sustainers of injury. For though all offences against the law of reason are real offences against the safety of all within their reach, and are truly punishable; yet, it is by compact only that those who are not real and immediate sufferers come by power to punish them. But in the natural state it will readily occur to every one that the power to punish must be frequently wanting in injured persons. For he who is wicked and daring enough to commit murder, robbery, or any of the less offences in the natural, which, by the laws of the civil state, merit legal chastisement, will not voluntarily, submit to a just retribution of punishment. To compel submission to an equitable rule equally established, forms a principal part of civil government. But though in this association a power to punish infractions of its rules is vested, yet, the natural right of each individual is not thereby impaired. Every man, who, in the civil state, sustains criminal offence, has the same right to punish the criminal by law that he has in the natural state by reason. So that, on entering the civil state, we surrender not our natural right of punishing personal injuries. In the commutation we lose nothing: on the contrary we gain by the change. For if, in the civil state, criminal offence be committed against me; though I myself have the right to prosecute the offender to punishment, yet, if unable, from whatever cause, the state must prosecute for me. This privilege of the civil belongs not to the natural state. It is merely acquired by and results from men combining together for reciprocal protection. So that,



in the civil state, the natural right of individuals to punish offences committed against them, is not only preserved in its purity and fulness, but they have, in addition, the whole community to aid them. Therefore, so far from investing society with punitive power, being a surrender of natural rights or privileges, that is a substantial and happy enlargement of natural liberty.

From what has been said, it results,

First, that men never had, in the natural state, a right to do wrong. And as it is evident that no one can surrender what he never possessed, so, this cannot be one of the supposed privileges surrendered to the civil state.

Secondly, that if it ever was the right of men to do wrong, that right must forever appertain to them in every state: since, the right must be determined by reason, whose laws are unalterably the same. And as reason cannot approve or sanction that in one man which injures the rights of another, or violates equal justice; so, to do wrong, or to violate equal justice, cannot be a privilege of the state of nature.

Lastly, the placing power in the civil state, to punish offences committed against its safety, does not impair one jot the right which belong to men in the state of nature, of individually punishing individual injuries. But on the contrary this right is not only preserved in its pristine state, but is additionally strengthened by the additional accession of the conjoint protection of the society or sovereign.

Whither then shall we seek for the "surrendered privileges?" Diogenes with his lanthorn and acumen would find it difficult to discover them. Of what do they consist? It is plain that governments cannot be considered in any other light than as restraints upon those actions which, in every state, defies the law of reason; but which, in the natural state, cannot conveniently be punished.

A brief analysis of our actions will make this appear evident.

All the vast and vastly diversified actions of men may be classed under three heads:

First, virtuous actions, or such as promote individual and general good.

Secondly, indifferent ones, or such as produce neither good nor evil consequences to society. And,

Thirdly, vicious actions, or such as are evidently pernicious to individuals and to the state.

With respect to the first—It is evident that government laws can have nothing to do with virtuous actions. Governments are neither instituted to prevent nor to punish them. And where they do either, they are governments of violence, not of justice.

With respect to the second—Laws are always indifferent where actions are so. They cannot take cognizance of actions which neither produce good nor bad consequences to the state. They are with these as with virtuous ones, mere unimportant and dormant parchments. They cannot operate; since, men cannot, agreeably to reason and to just laws, either be punished or rewarded for actions as devoid of utility as they are of evil consequences.

In regard to the third.—Here laws operate within their province. The power placed in the civil state to punish crimes committed against the law of reason, which, in the natural state, cannot conveniently be punished, here operate in its full force and to accomplished the designed end, viz. that men may be free from violence and injustice. The sole design of government is to prevent men from violating the sacred rights of each other, and, where it cannot, to punish offenders. Governments are of no other use among men. Nor can they operate in any other manner without committing the identical injustice to prevent which they are instituted. Their powers then being solely confined to the prevention and punishment of actions subversive of justice, and which violates the law of reason, on which civil laws are founded, it is clear, that, in civil societies standing upon universal justice, men do not nor cannot surrender any of the rights or privileges appertaining to them in the state of nature.

Having shewn that men cannot, consistently with reason and justice, relinquish, on entering the civil state, any



of the immunities which appertain to the state of nature; we shall now briefly enquire,

How the supposed privileges are to be relinquished, allowing them to be relinquishable; whether according to justice, and if so to whom are they to be surrendered?

We imagine that even the esteemers of the spurious and trammelling doctrine of surrendering natural privileges to the civil state, do not wish to be understood that a partial and unjust relinquishment is what they contend for. To be consistent with themselves they must allow, that if by the regular and inevitable operation of entering the civil state, it be really necessary for one man to surrender thereto a given portion of privileges, it is also equally necessary for each and every one to give up the same portion. If this be not their meaning; if they do not pay due deference to reason and justice, their discourses may be considered as mere political delusion and finesse, by which, at one stroke, mankind are meant to be divided into two parts, the one to govern, limited only by power, and the other implicitly to obey. But in this we neither discover philosophy nor philanthropy; we neither see reason or justice; which if they abandon, they are not worth contending with. We shall therefore suppose them to be actuated by pure principle, & advocates for pure and universal justice: and on this ground we pledge ourselves to shew the utter impossibility of making such surrender.

This then may, we conceive, be laid down as an axiom, that if it be necessary and unavoidable for one man, on entering the civil state, to surrender to that state, a given quantity of natural privileges, it is equally necessary and unavoidable for every one of the contracting parties to surrender an equally given quantity. If it be necessary for one man, it is also equally necessary for another, and for the whole.—A position so self-evident is not susceptible of additional proof. Suppose, then, the citizens of the United States, who are adults, to consist of one million; and that they shall all surrender to the State an equal number of privileges: Axiom “if equals be taken from equals the wholes are equals;” therefore,

if the supposed surrender of privileges be equally made the identical equality of the natural state, it must necessarily and unavoidably prevail in the civil; since, by taking from each individual an equal quantity of natural privileges, the whole must necessarily be equal; and consequently be left in the same state of perfect equality in which they were prior to entering into the civil state, and the supposed surrender of natural privileges. Of consequence, to relinquish natural privileges on entering the civil state is absolutely impossible, according to our ideas of reciprocal justice; and therefore, the position is destitute of just and rational foundation.

Besides, when each individual in society has surrendered an equal number of natural privileges, to whom, in the name of common sense, are they given? Is it possible for a state to contain more than the whole of its inhabitants? every man will answer no. And when the whole have surrendered an equal number of privileges, who is there to receive them? The answer is easy, no one. But perhaps it will be said, the state. But of whom is the State composed? Of the identical whole who have, it is supposed, made the surrender; which brings the conclusion to the same point. Therefore, natural privileges cannot be surrendered to the civil state, where equal right and justice prevail.

This exposition of political equality is not local: the principle will apply to the civil concerns of men, where-in they may be found. Nor can its reasonableness be overthrown: for its basis is God; therefore, its truth cannot be shaken. Power, centered in the hands of wicked and ambitious men, may indeed prevent its practice; and the admirers of *policy*, subversive of justice, may advocate its balefulness; but on the subject of policy, hear the Poet.

"Philosophy consists, not in idle schemes or airy speculations.  
The rule and conduct of all social life are her great precepts.  
Not in lonely cells obscure she lurks,  
But holds her heavenly light to Senates and to Kings:  
To guide their councils, and teach them to direct and reform mankind.  
*All policy but her's is weak and rotten.*  
All valour, not connected by her precepts,



Is a destroying fury sent from hell to plague unhappy man,  
And ruin nations."

Thus it is evident that all just governments emanate strictly from the people; that is, from their universal equality and consent. National compacts, therefore, being the property of the people, are to be considered at all times revocable by them. They have the same right to alter or to annul them, and to institute others, that a man has to delapidate his own house, and to erect another in its stead. Both these rights flow from the same source, viz. that every man has a right to dispose of his property in such way as may appear most conducive to his happiness. But as wise nations do not nor will not change their constitutions upon light and trivial grounds, so, a wise man will not, for light and trivial causes, destroy or materially alter his own house. So that, notwithstanding they have the right, yet, wisdom, calmly and deliberately exercised, must at all times determine the expediency of the change.

## CHAP. II.

### *Of the Corporation of New-York.*

It is a question of importance to the citizens of New-York, and has some claim to their attention, whether the corporation of the city, all things considered, is or not of public utility; and if not, to what cause its inutility is attributable? It is time to determine the utility of civil politics by the beneficial effects they produce; especially one of such vast expence, and possessed of such immense and deliterious influence as that of our corporation. The heterogenous causes which first brought incorporations into being in modern Europe, and which entitled them to some deference, do not now, nor never did exist within these states. We are neither borne down by the imperiousness of baronial tyranny on the one hand, nor moved to compassionate the sufferings of vassals on the other. (j) Those dark and barbarous times

(j) *Hume, speaking of corporations, says "Even in France, a country which made more early advances in arts and civility than England, the first corporation is sixty years posterior to the conquest under the duke*

are passed. But European incorporations produced advantages, *when first instituted*, which do not nor cannot accompany them in the United States. They introduced a degree of *liberty* within their jurisdictions favorable to the citizens and quite unknown beyond their limits. And though they produced but partial good, yet they were proportionately serviceable. But it would be difficult to conceive what corporations have to do with liberty within these states, except to banish it as speedily as possible from them. In a republic like this, where representative systems of government prevail in great abundance and perfection; and where a greater degree of liberty is enjoyed without than within their jurisdictions, while they can be but of little service to the citizens, they are capable of an infinity of mischief.

This chapter is intended to shew the propriety of altering the present mode of appointing the Chief Magistrate of the city. For this purpose we solicit the attention of the reader to the establishment of the following propositions.

First. That the present mode of appointing the Chief magistrate of the city is unjust.

Second. That to ensure a pure administration of the Mayoralty, it is essential that the Mayor be elected by the citizens over whom he presides.

Lastly. That until the citizens enjoy this right, however noxious the Chief magistrate may be, they have no power to remove him.

In politics there is, perhaps, no maxim clearer than this, that the people, for whom a Government is intended, have the exclusive right of "choosing their own governors." For laws being, of right, founded upon the

*of Normandy; and the erecting of these communities was an invention of Lewis the Gross, in order to free the people from tyranny under their lords, and to give them protection, by means of certain privileges and a separate jurisdiction. An ancient French writer calls them a new and wicked device to procure liberty to slaves, and encourage them in shaking off the dominion of their masters!" Hist. of Eng. v. 1. p. 435. Phila. E. 1795.*

*See also Smith's Wealth of Nations, v. 2. p. 87. Phila. E. 1796.*



united conduct of men and instituted for their safety, those for whose benefit they are intended are the *only proper persons to determine* the fitness of men to make and to administer them. The least interference with this right of self-judgment is unjust. For though A. may be more competent to judge of the concerns of B. than B. himself, and on that account his judgment may be sometimes solicited; yet for A. to judge for B. by established rule, against his consent, and with power to bind him by his decisions, is a most unsufferable tyranny. To this conclusion every one will assent. And yet if we test the appointment of the mayor by this rule we shall find that it is founded upon it. This we shall do; and that we may be the better understood we shall shew, from the constitution the manner of his appointment.

In Art. 18. of the constitution, it is provided, "That all officers, other than those who by this constitution are directed to be otherwise appointed, shall be appointed in the manner following, to wit: the assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant governor, or the president of the senate, when they shall respectively administer the government, shall be president and have a casting voice, but no other vote: and with advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum; and further, the said senators shall not be eligible to the said council for two years successively."

Greenleaf's edition of the laws of New-York, 1798.

Particular provision not being made in the constitution for the election of the mayor, his appointment falls within the province of this council, which, after a delusively refining process, consist of four senators, one from each district of the state. To evince the injustice of this mode of appointment we shall shew by analogy that the right of appointing or electing the mayor and (of course every corporate officer now appointed by the council) ap-

pertains exclusively to the people within the pale of the corporation: and consequently for other persons to exercise that right is unjust. But as the legislature may, by another part of the constitution of the state take this privilege from the council and transfer it to the citizens within the corporate jurisdiction, it is only for them respectfully to command it and it must be done.

It is meet that the corporation should acknowledge the constitution of the state as its supreme guide, and that all its proceedings should be in coincidence with its principles. For this purpose, as the corporation depends upon the suffrage of the state for its being, it is necessary that the legislature should take cognizance of its proceedings, but only where they are incongruous with the constitution. Under this restriction *only* the people within the corporation should be left to regulate their own concerns.

The business of the corporation, as it respects internal police, is as distant from that of the aggregate state, as legislation in one state is from that of another. The corporation is an insular polity, instituted for local purposes: Its boundaries, its jurisdiction, its powers, extend not beyond the confines of the island. (k) It is intended solely to affect the people within its limits or it is not. If it be not, if its jurisdiction be not bounded by a known division of the state, its rights and its powers must be commensurate with it. But this no one will assert. If its jurisdiction extend not beyond the bounds of the city, and it be intended solely for the citizens, which every one must acknowledge, then by the same rule that the people of the state have the sole right of electing the legislature thereof, viz. that of managing their own concerns, those of the city have the exclusive right of electing city officers. The business of the city being distinct from that of the entire state, the state ought not, after suffering a provincial government to be erected within it, to interfere in its ulterior regulations, except as before said, where those regulations clash with the

(k) See charter of New-York, Geo. II. p. 35—6.



constitution. To interfere in any other case is as unjust as it would be for one state to interfere in the internal legislation of another.

This self-management of self-concerns, is the vital part of government. Accordingly we find that, where there is danger of foreign interference, governments very properly repel it with suitable pertinacity. But foreign interference is in its nature relative. The federal government would justly term that foreign interference which, contrary to the exclusive management of its own concerns, should be attempted to be introduced into it by a foreign government. So, for the federal government to interfere in the internal regulation of the respective states, would be foreign interference. And so if this state should intermeddle in the internal political arrangements of Connecticut, notwithstanding the juxta-position of the two states, yet, the interference would be as unjust and foreign as if it came from transatlantic parts. This necessarily flows from this thesis, that separate body politics ought to manage their own concerns. This is the right of self-judgment for which we contend, and which is as applicable to our corporation considered with the state, as it is to one state considered with another.

If it be fit and requisite for the council to appoint the mayor of the city, it is equally so for them to appoint the aldermen, which they do not. But in the present mode in which this business is transacted, we see nothing of those cheering improvements, which, generally, have so justly and eminently distinguished American politics. The appointment of the mayor by the council is a faithful transcript, implicitly taken, but existing under dissimilar circumstances, of that established in the charter of George II. At that era England held dominion over these states, and it was consonant with her usual policy towards them to suffer the citizens to enjoy a few unimportant privileges, such as electing aldermen, constables and so on; but to take especial care that with respect to important offices such as mayor, recorder, sheriff, &c. they should be appointed by the governor, who was appointed by the king. The better to keep the citizens in

vassalage, and at the same time pleasingly to reconcile them to that gloomy state, they were suffered to enjoy those petty privileges. Like a cunning conqueror who, to perpetuate his conquest and to reconcile the conquered to the conqueror, the king was *graciously pleased* to allow the citizens to enjoy privileges from the exercise of which, it was conceived, no injury to his domination could result. But surely there is no occasion for the state legislature to treat the people of the city, in this respect, as they were wont to be treated by *this British king*. It is impossible for the legislature to entertain the idea that imparting to the citizens the right of electing their corporate officers, would be dangerous to their power. But if they could, *that power is unjust which does not flow from, and the exercise of which does not comport with the liberty of the people*; and therefore its reduction could not be reasonable ground for regret. But the interest of our government is not incompatible with that of the citizens. The interest of the one is the interest of the other. They are identically the same. But this was not the case with the government of Great Britain whose object was taxation, & therefore the deeper the people were immersed in slavery the more of their income might be extorted from them. On the other hand every thing estimable to America demanded that she should rid herself of the detestable yoke as soon as circumstances would permit.

The appointment of the mayor by the council, like every other act not founded upon reason, is irreconcilable even with itself. Nor is it probable that if the constitution had been discussed in a period of peace, the present mode would have been recognized. But having once had being, like many other errors, it has been continued. If the citizens can regulate their corporate concerns in part, without legislative interposition, why may they not in the whole subject to constitutional checks for unconstitutional aberrations? The state compels the corporation to defray its own expence and at the same time deprives the citizens of the right of electing their city officers! This is an extensive branch of that system against which the United States contended, and what is still more



strange was even acted upon by the State during the conflict!

That the citizens of the corporation have a right to regulate their own business is acknowledged by the State Legislature, as it respects city expence, with which the State has nothing to do as to contribution. Why do not the State provide, by general tax, for defraying the expence of the city? Because that expence being incurred by city regulations *only*, it would be unjust for those living beyond its limits and who are not partakers of its benefits, to bear any part of its burdens. In this respect the city is considered as a sort of integer, acknowledging, certainly, the supremacy of the State, but left to itself as to revenue regulations. But if those living without the limits of the city ought not on that account to bear any part of its expence, for the same reason they ought to have no concern with its internal police. For the State to appoint charter officers to rule *over* the citizens, and to incur expences which must be borne solely by them, is comparable to quartering State soldiers of equal permanence and expence on a particular Town. The freedom of the citizens in both cases is alike violated; and the injustice of the one can only be equalled by the injustice of the other.

That the citizens have the Chief magistrate thus imposed upon them, can admit of little doubt. To prove this it will only be necessary to advert to the manner of his appointment. The council by which he is appointed, is thus composed. Every citizen who pays taxes to the State, and rents a house of the yearly value of forty shillings is eligible to vote for assemblymen. Senators are elected by citizens possessed of freehold estate of the value of an hundred pounds, free of incumbrance. The two houses being thus composed, the assembly elect from the Senate the council of appointment. In this council the southern district, in which the city is comprehended, has one member, who can only be *presumed* to represent the city, since the district of which he is the representative, includes it. It would be a misapplication of words to term this Senator the representative of the city, whose

votes, compared with those of the district at large, are certainly not more than as one to six. But if he was the representative of the city and the only person who appoints the Mayor, still, the placing in his hands by the state, the right of the citizens to judge themselves of the fitness of persons to fill the Mayoralty, is unjust. To take from the people this right of self judgment, is dangerous to liberty. Of this no one, possessed of the ordinary senses of a man, will doubt. We have countless and striking facts which invite our attention every day in Europe of the awful effects which result from this surrender. Nor are we without instructive lessons in our own country of its dangerous tendencies. (1.) It is a species of that *virtual representation* so much admired by Monarchists, but which is so utterly inconsonant with the genius of republican America. It is the negation of constituent immunities, and the never failing operator of the slavery of man.

But allowing this Senator to be the representative of the city, and that it is meet he should judge for the citizens, still he is only one opposed to three persons in the Council. And who are they? People who reside out of the district in which the city is, and who, for ought we know, never saw it. These gentlemen surely will not be called the representatives of the city. In them the citizens have no choice. They are the deputies of districts whose interest may not accord with that of the city, and whose sentiments may be repugnant to those of the

(1.) *Had the Senate of the United States been elected by citizens eligible to vote for members of the house of representatives, instead of being appointed by State Senates; that most baleful instrument, the British treaty, the great Patriarch of all the evils with which the United States are now afflicted, would not, in all probability, have been ratified. Besides, look at the Senators sent from what are called federal States, examine their speeches and votes, and compare them with the spirit of the revolution and the sound principles of the federal constitution, and every intelligent man will see just and serious cause for regret, that the people themselves do not elect them. There is nothing more common in this state than to see Republicans deputed by the people & federalists appointed by the Senate. A plain proof that where the people suffer others to judge for them they are in danger of being misrepresented. But perhaps this is one of those ineffable checks and balances eulogized by President Adams!*



citizens. They are men over whom the citizens of New-York have no controul. They may therefore impose upon them a Chief-magistrate of turbulent & acerbous disposition, and who in every respect is opposed to their sentiments and wishes. And where is the remedy?

It is to be expected, from every thing the world has hitherto furnished, that the sentiments and administration of the Mayor will accord with considerable exactitude with the sentiments of those by whom he is appointed. This has been peculiarly verified by the present incumbent. The members of the council of appointment for years back have been federalists; and so is the Mayor who has held that office *ten years*. What has been the consequence? Every one who is acquainted with his general administration need not be told of the partiality he has exhibited towards those of federal sentiments, and the rancour and enmity to Republicans. No one is so ignorant as not to know what he has done both in public and private life to exalt the one and to sink the other. But this was to have been and may in future be expected, unless the Legislature should, in their wisdom, give to the citizens the right of his election. This is the only radical cure.---In the city there is a large and unequivocal majority of republicans; but what will this avail the citizens unless it should be so far the case throughout the States, as that in the Assembly there should be a constant majority; or even then, unless in the senate there should be one republican Senator from three of the four districts? The citizens might still be saddled with a Mayor of sentiments hostile to their own; and who, like Burke's king, would hold the Mayoralty in "contempt of their choice." Is this freedom? Is this representation? Is it political justice.

To secure a faithful execution of office and a decent respect for the sentiments of the people, it is essential that the officers of government be elected by them. To make them independent of this only source of power, is to make the people subservient to their views. This is an inversion of order. This is political injustice. Whereas to make them *really* dependent upon the people is of itself sufficient to induce measures consistent with their

happiness, and to impel even a Nero to deeds of justice and of mercy.

To accomplish this end in the present case, it is necessary that the citizens within the limits of the corporation, who are eligible to vote for assemblymen, should elect the Mayor. In this case, if his reliance upon them should not, contrary to rational calculation and universal experience, induce a just administration, they might at the end of the period for which he should be elected, supercede him. This is a necessary part of election, that the people may, by ingenuous discussions, determine how far those whom they have honored with their trust & confidence, merit their continuance. But at present, tho' the citizens may speak of the administration of the Mayor, yet having no choice in his election however iniquitous that administration may be, they cannot remove him. They may indeed hope that he may be a good man, and if it should so happen it is well; but if not, they have him "for better and for worse;" they are obliged to bear with him. The prevalence of republicanism throughout the state may produce a salutary change of men; and this is the only ground of hope from the present mode of appointment. But though a change thus effected would be acceptable; yet for the citizens constantly to rely upon this contingency, even should it be as constantly realized, would be improper inasmuch as the *state* and not *themselves* would furnish the city with its Chief Magistrate. (m)

Such are the peculiar hardships under which the citizens labour from the present system!

Where the success of actions depend upon efforts proportioned to the end, men exert themselves with cheer-

(m) *We are not desirous of copying political systems implicitly. But where we can cull choice parts from systems compounded of good and bad materials, no friend to human improvement can object to it. Even in London, the seat of every thing venal, the freemen choose their own mayor. And notwithstanding Pitt, in the plenitude of his intrigue and seduction, endeavoured at the last election to impose upon them a Chief Magistrate of his own choice, yet we have seen, with admiration, that all his schemes were unavailing. The firmness of the freemen was superior to all the arts of this disturber of human repose.*



fulness. But, when by uncommon exertions the attainment of objects ardently desired borders on impossibility, the necessary excitement to ultimate success diminishes; and instead of being aroused to actions apportioned to the magnitude of the prize, we are too apt to succumb under the incumbent and unpleasing pressure. Such is the gloomy prospect of the citizens of New-York from the present mode of appointing the chief magistrate! There are no exertions of which they are capable, abstractedly considered from the rest of the state, by which they can at all effect the mayor. If, as before said, the city should continue to send republican representatives to the assembly, and by a fortuitous concurrence of circumstances the other parts of the state should not, what power have they to remove the mayor however much his removal might be desired? None. Where then is the liberty of the citizens in this respect? To say that men are free when their freedom depends upon the will of others, is as great a contradiction as to say that the same thing can be and not be at the same time. Freedom consists in one man being free from the restraints of others. But in this respect the citizens are as much bound by the will of the state, in a matter which, of right, only concerns themselves, as a slave is by the will of his owner: and the influence they have in the appointment of the mayor is little more than if he was appointed by the king of England.

Such a system ill accords with justice and the political improvements of America. Nor is it consistent with the wisdom of the legislature to suffer its continuance. It peculiarly behoves the present legislature seriously to consider this subject. Much indeed depends upon it. Beneficial effects will doubtless result from a change of men at the present juncture. But *permanent* good can only be expected from a radical change in the system. Let the legislature give to the city the right of electing its Chief Magistrate, and by so doing the independance of the citizens and perhaps the freedom of the state, will be preserved. This, we repeat, is the only source from

which durable good can be expected. For if from inattention or any other cause the republicanism of the state should not, at the next session, predominate in the assembly, what may be done by this, may be undone by the next legislature. Whereas if the citizens once possess the right of electing the mayor, it would not be an easy matter at any subsequent period, to wrest it from them.

JAMES CHEETHAM.





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